

CHAPTER 2023-292

Committee Substitute for Committee Substitute for House Bill No. 387

An act relating to the medical use of marijuana; amending s. 381.986, F.S.; requiring qualified physicians to perform in-person physical patient examinations before issuing initial physician certifications for the medical use of marijuana; authorizing such qualified physicians to perform patient examinations and evaluations through telehealth for renewals of physician certifications for the medical use of marijuana under certain circumstances; defining the term “in-person physical examination”; authorizing the Department of Health to suspend the registration of a qualified physician in the medical marijuana use registry for a specified timeframe under certain circumstances; requiring the department to issue medical marijuana treatment center licenses to certain applicants as soon as practicable; requiring the department to grant certain applicants a specified timeframe to cure cited deficiencies; requiring the department to issue a license to such applicants if the deficiencies are cured within the specified timeframe; requiring the department to issue such licenses to the estate of certain applicants under certain circumstances; requiring a specified number of available licenses to be reduced by the award of such licenses; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (a), (g), and (i) of subsection (4) of section 381.986, Florida Statutes, are amended to read:

381.986 Medical use of marijuana.—

(4) PHYSICIAN CERTIFICATION.—

(a) A qualified physician may issue a physician certification only if the qualified physician:

1. Conducted ~~an a physical examination of while physically present in the same room as the patient~~ and a full assessment of the medical history of the patient. Before issuing an initial certification to a patient, the qualified physician must conduct an in-person physical examination of the patient. For certification renewals, a qualified physician who has issued a certification to a patient after conducting an in-person physical examination may conduct subsequent examinations of that patient through telehealth as defined in s. 456.47. For the purposes of this subparagraph, the term “in-person physical examination” means an examination conducted by a qualified physician while the physician is physically present in the same room as the patient.

2. Diagnosed the patient with at least one qualifying medical condition.

3. Determined that the medical use of marijuana would likely outweigh the potential health risks for the patient, and such determination must be documented in the patient's medical record. If a patient is younger than 18 years of age, a second physician must concur with this determination, and such concurrence must be documented in the patient's medical record.

4. Determined whether the patient is pregnant and documented such determination in the patient's medical record. A physician may not issue a physician certification, except for low-THC cannabis, to a patient who is pregnant.

5. Reviewed the patient's controlled drug prescription history in the prescription drug monitoring program database established pursuant to s. 893.055.

6. Reviews the medical marijuana use registry and confirmed that the patient does not have an active physician certification from another qualified physician.

7. Registers as the issuer of the physician certification for the named qualified patient on the medical marijuana use registry in an electronic manner determined by the department, and:

a. Enters into the registry the contents of the physician certification, including the patient's qualifying condition and the dosage not to exceed the daily dose amount determined by the department, the amount and forms of marijuana authorized for the patient, and any types of marijuana delivery devices needed by the patient for the medical use of marijuana.

b. Updates the registry within 7 days after any change is made to the original physician certification to reflect such change.

c. Deactivates the registration of the qualified patient and the patient's caregiver when the physician no longer recommends the medical use of marijuana for the patient.

8. Obtains the voluntary and informed written consent of the patient for medical use of marijuana each time the qualified physician issues a physician certification for the patient, which shall be maintained in the patient's medical record. The patient, or the patient's parent or legal guardian if the patient is a minor, must sign the informed consent acknowledging that the qualified physician has sufficiently explained its content. The qualified physician must use a standardized informed consent form adopted in rule by the Board of Medicine and the Board of Osteopathic Medicine, which must include, at a minimum, information related to:

a. The Federal Government's classification of marijuana as a Schedule I controlled substance.

b. The approval and oversight status of marijuana by the Food and Drug Administration.

c. The current state of research on the efficacy of marijuana to treat the qualifying conditions set forth in this section.

d. The potential for addiction.

e. The potential effect that marijuana may have on a patient’s coordination, motor skills, and cognition, including a warning against operating heavy machinery, operating a motor vehicle, or engaging in activities that require a person to be alert or respond quickly.

f. The potential side effects of marijuana use, including the negative health risks associated with smoking marijuana.

g. The risks, benefits, and drug interactions of marijuana.

h. That the patient’s deidentified health information contained in the physician certification and medical marijuana use registry may be used for research purposes.

(g) A qualified physician must evaluate an existing qualified patient at least once every 30 weeks before issuing a new physician certification. A qualified physician who has issued a certification to the patient after conducting an in-person physical examination as defined in subparagraph (a)1. may conduct the evaluation through telehealth as defined in s. 456.47. A physician must:

1. Determine if the patient still meets the requirements to be issued a physician certification under paragraph (a).

2. Identify and document in the qualified patient’s medical records whether the qualified patient experienced either of the following related to the medical use of marijuana:

a. An adverse drug interaction with any prescription or nonprescription medication; or

b. A reduction in the use of, or dependence on, other types of controlled substances as defined in s. 893.02.

3. Submit a report with the findings required pursuant to subparagraph 2. to the department. The department shall submit such reports to the Consortium for Medical Marijuana Clinical Outcomes Research established pursuant to s. 1004.4351.

(i) The department shall monitor physician registration in the medical marijuana use registry and the issuance of physician certifications for practices that could facilitate unlawful diversion or misuse of marijuana or a marijuana delivery device and shall take disciplinary action as appropriate. The department may suspend the registration of a qualified physician in the medical marijuana use registry for a period of up to 2 years if the qualified physician:

1. Fails to comply with this section; or
2. Provides, advertises, or markets telehealth services before July 1, 2023.

Section 2. (1) Notwithstanding any provision of s. 381.986(8)(a)2.b., Florida Statutes, to the contrary, the Department of Health shall, as soon as practicable, license all applicants that applied for licensure during the application window created by the department to accept applications for licensure pursuant to s. 381.986(8)(a)2.b., Florida Statutes, and received:

(a) A notice from the department regarding the applicant's application for licensure indicating the department's intent to approve or deny the application which did not cite any deficiencies with the application, regardless of the applicant's final score; or

(b) A final determination from the department as a result of a challenge to the application process, initiated pursuant to s. 120.569, Florida Statutes, determining that the applicant met all requirements for licensure pursuant to s. 381.986(8)(a)2.b., Florida Statutes, and applicable rules, regardless of the applicant's final score.

(2) Upon this section becoming a law, the department shall grant each applicant referenced in subsection (1) 90 days to cure, pursuant to the errors and omissions process established in department Form DH8035-OMMU-10/2021 as incorporated by the department in Rule 64ER21-16, F.A.C., any deficiencies cited in a notice referenced in paragraph (1)(a). If such applicant cures the deficiencies within that 90-day timeframe, the department shall issue a license to the applicant.

(3) If an applicant who was alive at the time he or she received the notice referred to in paragraph (1)(a) dies during the challenge referred to in paragraph (1)(b), the death of the applicant may not be a reason to deny the challenge. In such a case and in the event of a successful challenge pursuant to paragraph (1)(b), the department must issue the license to the estate of the applicant.

(4) The number of licenses made available for issuance under s. 381.986(8)(a)4., Florida Statutes, must be reduced by the number of licenses awarded under this section, except that the number of licenses awarded under this section may not be deducted from the number of licenses available for the application window held between April 24, 2023, and April 28, 2023.

(5) This section shall take effect upon becoming a law.

Section 3. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2023.

Approved by the Governor June 26, 2023.

Filed in Office Secretary of State June 26, 2023.